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2002 Missouri medical malpractice data emphasizes need to reverse court ruling on caps

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Gov. Bob Holden

Director: Scott B. Lakin

Editor: Randy McConnell

Associate Editor: Melissa Becker

Public Policies serves as a key communications link between MDI and Missouri's legislators, weekly and broadcast media, industry observers and trade associations.

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Department of Insurance (MDI) Director Scott B. Lakin says the state must act quickly to reverse a 2002 court ruling that has seriously disrupted Missouri's medical malpractice market.

Under the January 2002 ruling in *Scott v. SSM Healthcare St. Louis*, courts can award multiple caps in each medical malpractice case for non-economic damages, rather than a single cap of \$557,000 per injury that increases each year to reflect inflation. For 15 years, Missouri courts operated under a single cap.

After the *Scott v. SSM* decision, Missouri insurers more than doubled their reserves for future payments to 2002's malpractice victims even though the number of claims actually fell again last year, Lakin said.

Claims filed – one of the most important indicators of future costs – fell another 6 percent for all medical providers and remained stable for doctors in 2002, he said. Claim-filing levels are 37 percent or more below their all-time highs.

But unless the General Assembly acts to undo *Scott v. SSM Healthcare*, Missouri health-care providers will face unnecessarily large premiums for years to come, he said.

"Looking at our medical malpractice environment, I can identify one pressing trouble spot: *Scott v. SSM Healthcare*," Lakin said.

"The department and Gov. Bob Holden in February urged the General Assembly to reverse this decision. That change, more than any other, should provide rate relief for physicians and other providers. But the provision is buried in pending legislation full of special-interest items – like new legal privileges for shoddy nursing homes – that deserve to be vetoed."

Scott decision helps boost expected 2002 losses to 108 percent of premium, 118 percent for physicians

Multiple defendants are common in malpractice litigation, and the Scott decision further allowed multiple caps for each defendant if they committed medical negligence more than once, even if a single injury resulted.

Lakin noted that insurers have testified before legislative committees

(See *medical malpractice*, p. 2)

Medical Malpractice

(continued from page 1)

that they were doubling their reserves after *Scott v. SSM*. "This court ruling created enormous uncertainty about the potential size of an insurer's risk when patients are injured through negligence — and the 2002 data bears that out," he said.

In 2001, licensed insurers estimated payouts on claims filed that year would total \$79 million. Last year, the amount increased to \$168.7 million on 2002 claims — by more than \$89 million or 113 percent.

The insurers' financial reports also reflect the surge in premium increases over the past two years. Health-care providers paid licensed insurers \$156.1 million for coverage in 2002 — \$58 million or 61 percent more than the previous year. Doctors' premiums rose to \$104.7 million, up by a slightly lesser 55 percent from \$67.6 million in 2001.

Overall, Missouri's licensed medical malpractice insurers reported a "loss ratio" of 108 percent — i.e., they expect to pay out \$1.08 cents in benefits to 2002 claims' victims for every dollar of premium collected, up from 79 cents in 2001. For doctors, the figure reached \$1.18 in expected payouts for every premium dollar in 2002. The loss ratio for physicians almost doubled from 61 cents the year before.

The increase in the loss figures also covers insurers' re-evaluation of how the Scott decision is expected to increase cost estimates for claims filed in 2001 and previous years. This one-time adjustment overstates losses for 2002 activity.

Insurers likely have not actually paid most of the losses reported for 2002. Successful medical malpractice claims are not settled for 30 months, on average, so insurers estimate those future payments and hold funds in reserve. The losses largely exist on paper now.

Several key indicators stable

Among other highlights of the 2002 data:

- As mentioned, claims declined again. In 2002, patients filed 1,241 claims against providers, down 6 percent from the previous year. Claims filed were down 37 percent from their record high in 1995. Claims against doctors were stable — 608 in 2002 versus 603 in 2001. Claims filed against physicians have decreased

41 percent from their record, also in 1995.

- Payouts to victims — both in settlements and court awards — rose back to 2000 levels after a dip last year. In 2002, the overall medical malpractice award for economic and non-economic damages combined rose from \$169,467 to a peak of \$211,943. The increase was less for physicians: \$198,511 to \$212,191. The physician average payouts were less than peaks posted in 1996 and 2000.

- Most of the increase in payouts — about 60 percent — was attributable to economic damages, generally lost wages and extra medical care needed by the victim. No reform proposals pending in the legislature would decrease these payouts.

- The increased payouts in 2002 reflect the greater severity of the injury suffered by the patient from medical negligence. For the first time, the patients' average injuries in successful claims went past "6" (permanent, significant injury such as loss of a major limb or organ) on a national scale, which rates damage from 1 (temporary, emotional injuries) to 9 (death), as assigned by insurers. Insurers indicated patients suffered more severe injuries (6.3 of 9.0) in claims against physicians; that figure tied the highest severity level ever recorded by doctors.

- Payouts fail to cover the actual damages to patients, based on insurer evaluations. The average award for economic damages in 2002 was \$120,568, although insurers indicated actual patient damages for medical costs and lost wages had exceeded an average of \$200,000.

- Despite the *Scott v. SSM* decision, Missouri has not yet produced many large judgments for victims. Only 13 exceeded \$1 million for all damages combined, compared to 14 the year before. In both years, two cases exceeded \$2 million and one topped \$3 million. The year 2002 produced fewer such payouts than in the mid- and early-1990s.

- Health-care providers did not become more reliant on unregulated companies known as "surplus lines" carriers that are extremely expensive. Despite rate increases across most types of carriers, surplus lines premiums did not grow last year. In recent years, the premium for surplus lines had increased rapidly, indicating an increasing number of doctors were rejected by licensed insurers and forced to seek more expensive alternatives. (See *Medical Malpractice*, p. 3)

Medical Malpractice

(continued from page 2)

Legislature's malpractice cap would reduce rates little, but would harm injured victims

The 2002 data indicates that current legislative efforts to cut the \$557,000 cap on non-economic damages would provide little rate relief for physicians and other health-care providers, even after waiting three to five years for court challenges to end.

Senate Bill 280, which has passed the Senate and awaits House action, would reduce the cap to \$350,000. In 2002, that change would have prevented the payment of \$7.6 million to 34 of the most severely injured victims, but accounted for only 7.9 percent of the total payouts. If total premium revenues were reduced by that \$7.6 million to account for a change in the cap, health-care providers would have saved only 4.4 percent.

The change would not affect 83 percent of the payouts for non-economic damage awards in 2002.

Other developments on medical malpractice

MDI now is conducting an unprecedented formal examination of the medical malpractice insurance industry in Missouri, focusing on the ratemaking process, reserving practices and such rapidly growing expense items as defense costs.

The governor shortly is expected to announce formation of a Missouri Commission on Patient Safety, a blue-ribbon panel that will make recommendations designed to decrease the incidence of medical errors and malpractice litigation in the state.

The MDI annual medical malpractice report is expected to be available to the public by late summer, either at no charge through the Web site or by sending \$35 to the Statistics Section, MDI, P.O. Box 690, Jefferson City, MO 65102-0690.



Holden's plan would cut Jackson County verdict by 84 percent

A recent medical malpractice judgment in Jackson County illustrates how the *Scott v. SSM Healthcare* decision threatens to inflate damages and how Gov. Bob Holden's reform plan would help contain costs.

The Jackson County verdict in *Cook v. Newman* would have been reduced from \$7.3 million to \$1,168,000, or by 84 percent, under Holden's plan.

In the court case, the family of a 53-year-old woman filed a lawsuit after she died because physicians perforated her colon during gall bladder surgery. The jury awarded \$718,000 in economic damages, which cover any lost income and extra medical costs because of the victim's injuries.

(No reform proposal, state or federal, would reduce a victim's economic award.)

Before January 2002, Missouri courts operated under a single medical malpractice cap for non-economic damages, otherwise known popularly as the "pain and suffering" of the victim and her family. But an appellate court ruling in *Scott v. SSM Healthcare St. Louis* allowed multiple caps in each case for every "occurrence" of medical malpractice, even though one injury resulted. The cap is \$557,000 this year.

The jury in *Cook v. Newman* – which by law is not informed about Missouri's cap – originally awarded the family \$7.3 million in non-economic damages, which the judge adjusted in March this year to \$6.6 million. The judge applied 12 caps – four caps for each of the three health-care providers that were found responsible for the woman's injuries.

Gov. Holden's plan would undo the effect of *Scott v. SSM* and restore the original interpretation of Missouri's cap on non-economic damages, or one cap per injury. He also has agreed to sign legislation lowering the cap to \$450,000 – as long as it is not included in a bill that limits the right of injured Missourians to obtain damages in non-malpractice cases.



Lakin: insured losses for last week's storms likely \$400 million for 60,000 policyholders

Missouri Department of Insurance Director Scott B. Lakin said the state's insurers are likely to pay at least \$400 million to more than 60,000 Missourians for insured property damage from early May's tornados and other violent storms.

"While these storms will not set records for the cost of damage or fatalities in Missouri, insurers are using terms like 'devastating' to describe the severity of damage that their adjusters are finding across the state," Lakin said.

Insured losses in southwest Missouri likely exceed \$130 million affecting more than 12,000 policyholders.

Lakin said the totals do not reflect out-of-pocket costs of \$3 million or more for insurance deductibles as well as extra costs to repair homes, barns and other structures that are covered by county mutual insurers in rural areas of Missouri, uninsured damage to publicly owned buildings and uninsured private losses, such as damage to many structures in historic Pierce City's business district.

He said estimates tend to increase as time passes and the magnitude of the damage becomes clear. MDI based its projections on reports from about 30 companies that insure almost all of the state's homes, small businesses and autos.

Lakin's announcement came in a news conference today in Battlefield, a Springfield suburb that suffered serious damage May 4. He was joined by representatives of the largest insurers in the state who talked about their response to the storm.

"For a solid week, every corner of Missouri was battered - with tornados from greater Kansas City to DeSoto and Jackson to a string of communities from Pierce City to Battlefield and from Stockton to

Camdenton. Hail and non-tornadic winds have added to the mounting total," Lakin said.

Insurers deploy 500+ extra personnel

Lakin, MDI director since March 2001, said his staff indicated that insurers have been improving dramatically their response time to natural disasters in recent years.

"In fact, the sheer volume of volunteers to help storm victims and insurance adjusters prompted authorities in some areas with the heaviest damage to cordon off areas to allow for removal of downed trees and power lines," Lakin said. "It's a fine line that's difficult to judge between speedy reaction and public safety after such disasters."

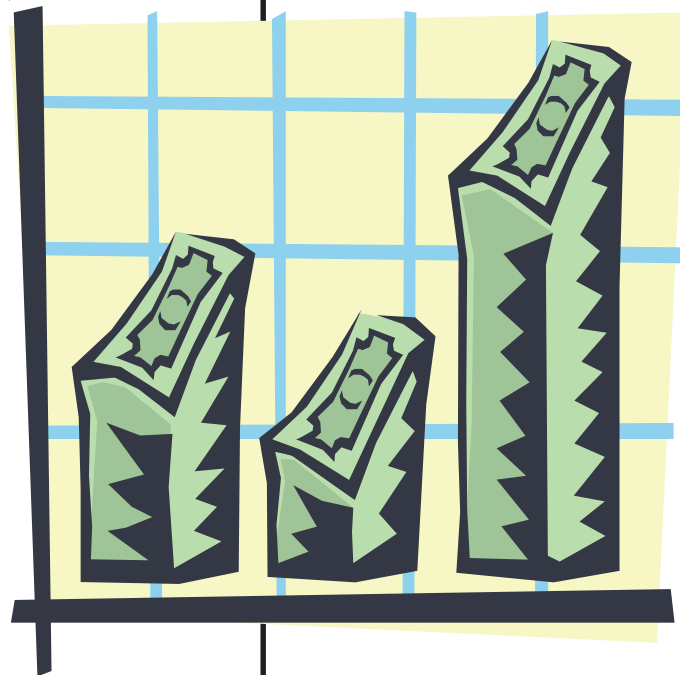
The state's largest insurers reported that they already have assigned more than 500 additional personnel to handle claims in Missouri with more teams expected to be deployed this week. Several have opened mobile or temporary catastrophe centers in hard-hit communities, Lakin said.

Fifteen of the state's largest insurers already have logged 26,716 claims for damage.

If Missourians have been unable to contact their local agents or insurance companies by this time, Lakin urged them to contact the MDI

Consumer Hotline (1-800-726-7390) for assistance.

"We generally encourage con-



sumers to try to reach their agents or companies directly in the first 48 to 72 hours after a storm - and they should continue to do so," Lakin said. "But MDI can quickly contact with insurers' disaster teams to make sure an adjuster contacts the policyholder, if consumers are still experiencing difficulties."

Lakin said that as of May 12, MDI had only received 60 complaints, or an unusually low number for such a serious weather event. "The speed and degree of insurer reaction to these storms has been reassuring to us as state regulators and to policyholders," he said.

Legal claims deadlines protect consumers

More than half of MDI's work on behalf of consumers involves claim denial or unsatisfactory settlements.

(See *Storms*, p. 5)

Storms

(continued from page 4)

Lakin said consumers need to be aware of the legal requirements for insurers to handle claims:

- 10 days to acknowledge in writing the receipt of a claim.
- Then, 30 days to investigate a claim, unless the need for further information causes a delay.
- After all documents needed to establish loss are received, 15 days to deny a claim or make an offer to settle it.

"These deadlines represent the legal maximum," Lakin said. "Most insurers will process and approve payments much more quickly."

Lakin noted MDI is still working with about two dozen consumer complaints about claims from the April 2001 hail storm in north St. Louis County - the costliest insured disaster in Missouri, which caused an estimated \$1 billion in damages, primarily to autos, roofs and siding.

Afterward, MDI handled 792 complaints from policyholders and recovered more than \$2 million extra for consumers. Almost all complaints are resolved within 60 days.

Besides using the MDI Consumer Hotline, Lakin said policyholders also can file electronic inquiries or complaints at the agency's Web site, www.insurance.mo.gov.



MDI to help avoid claim delays under city laws

Lakin said the department will work with insurers and local government officials to ensure that special "nuisance abatement" ordinances allowed by state law do not slow down the payment of claims.

Under Chapter 67 of Missouri law, local governments such as cities, towns, and first-class counties like Clay may enact ordinances that require insurers to pay those governments up to 25 percent of settlements, when losses exceed 50 percent of the structure's insured value.

The ordinances are designed to protect local governments if owners abandon destroyed buildings without removing debris.

Local governments are required to release the funds after 30 days unless they take legal action against owners who have not cleaned up the property.

According to MDI records, local governments with storm damage that have such ordinances include Clay County, Gladstone, Carl Junction, DeSoto, Kansas City, Liberty, Lake Ozark, Monett, Nevada, Osage Beach, Parkville, Pierce City and Sedalia. A complete list is available on the MDI Web site.



Vickie Denton – Employee of the Quarter

"I feel a strong responsibility not only to the department but also to the policyholders we are charged with protecting. The knowledge I learn along the way and the people I am able to help are a bonus," says Vickie Denton, MDI Employee of the Quarter.

Denton has worked for the department for eight and a half years. She has been a financial examiner-in-charge for five years. She previously was a financial examiner III.

She directs and supervises a staff of financial examiners in on-site reviews of licensed insurance companies to determine financial solvency and statutory compliance.

"The best part of my job is the people – working with other examiners and helping to train new examiners, but also working with insurance companies," Denton says.

Before joining MDI, Denton headed the internal revenue department for the Kansas City office of the Resolution Trust Corp., and she had a consulting business dealing mainly with start-up and small businesses.

"I have a wonderful, supportive, talented husband who puts up with my strange schedule and frequent travel," Denton says.



Regulatory actions –

April 2003

Legal action - agents, agencies, brokers, companies

American Investors Life Insurance Co., Topeka, KS, \$1,000 forfeiture for inaccurate data filing.

AmerUS Life Insurance Co., Des Moines, IA, \$1,000 forfeiture for inaccurate data filing.

Bankers Life Insurance Co., St. Petersburg, FL, \$500 forfeiture for inaccurate data filing.

Capital Title Co., Inc., Clayton, MO, \$200 forfeiture for demonstrating lack of fitness or trustworthiness.

CIM Insurance Corp., Southfield, MI, \$1,000 forfeiture for inaccurate data filing.

Companion Life Insurance Co., Columbia, SC, \$1,000 forfeiture for inaccurate data filing.

Doctors Insurance Reciprocal, Nashville, TN, registration revoked.

Employers Modern Life Co., Des Moines, IA, \$1,000 forfeiture for inaccurate data filing.

Hillsboro Title Co., Inc., Hillsboro, MO, \$400 forfeiture for failing to provide full information to the department and employing unlicensed individuals.

Insurance Corp. of New York, Stamford, CT, \$1,000 forfeiture for inaccurate data filing.

International Indemnity Co., Roswell, GA, certificate of authority revoked.

Kelsey National Corp., Los Angeles, CA, certificate of authority suspended.

MID Property & Casualty Insurance Corp., Southfield, MI, \$1,000 forfeiture for inaccurate data filing.

MTL Insurance Co., Oak Brook, IL, \$500 involuntary forfeiture for inaccurate data filing.

National Guardian Life Insurance Co., Madison, WI, \$1,000 forfeiture for inaccurate data filing.

Reciprocal of America, Richmond, VA, certificate of authority suspended.

The American Life Insurance Co. of New York, Louisville, KY, \$1,000 forfeiture for inaccurate data filing.

The Reciprocal Alliance, Nashville, TN, registration revoked.

United Healthcare Insurance Co., Hartford, CT, \$1,000 forfeiture for inaccurate data filing.

Financial exams

Blue Cross and Blue Shield of Kansas City, Kansas City, MO

Citizens Mutual Insurance Co., Columbia, MO

Farm Bureau Life Insurance Co., Jefferson City, MO

Farm Bureau Town & Country Ins Co., Jefferson City, MO

Good Health HMO, Inc., Kansas City, MO

Lumbermen's Underwriting Alliance, Boca Raton, FL

Missouri Valley Life & Health Insurance Co., Kansas City, MO

National Fire & Indemnity Exchange, St. Louis, MO

Company changes

Ameribest Life Insurance Co., Minneapolis, MN, merged into *Equitable Life Insurance Co. of Iowa*.

CGU Life Insurance Co. of America, Quincy, MA, changed its name to *Aviva Life Insurance Co.*

CNA Reinsurance Limited, London, England, changed its name to *CX Reinsurance Co. Limited*.

Doctors Insurance Reciprocal, Nashville, TN, registration as a risk retention group was revoked.

EBI Companies, Inc., Farmington, CT, withdrew as a third-party administrator (TPA).

General Security Insurance Co., New York, NY, changed its name to *Unitrin Auto and Home Insurance Co.*

(See *Regulatory Actions*, p. 7)

Regulatory Actions

(continued from page 6)

General Security Property and Casualty Co., New York, NY, changed its name to **Unitrin Preferred Insurance Co.**

International Indemnity Co., Rosewell, GA, certificate of authority was revoked.

ISMIE Mutual Insurance Co., Chicago, IL, was admitted with liability and miscellaneous authority.

Kelsey National Corporation, Los Angeles, CA, order lifting suspension of certificate of authority.

Liberty Insurance Corp., Boston, MA, redomesticated from Vermont to Illinois.

Millers Mutual Insurance Association, Alton, IL, changed its name to **Millers First Insurance Co.**

National Marketing and Administration, Houston, TX, withdrew as a TPA.

Preferred Life Insurance Co., New York, NY, changed its name to **Allianz Life Insurance Co. of New York**.

Reciprocal of America, Nashville, TN, certificate of authority was suspended.

Swiss-Am Reassurance Co., Armonk, NY, merged with **Swiss Re Life & Health America Inc.**

The Reciprocal Alliance, Nashville, TN, registered as a risk retention group.

Transamerica Life Insurance Co. of New York, Purchase, New York, merged into **AUSA Life Insurance Co., Inc.**

Utica Mutual Insurance Co., Utica, NY, amended its certificate of authority by deleting accident and health authority.

West Coast Life Insurance Co., San Francisco, CA, redomesticated from California to Nebraska.

Winterhur International America Insurance Co., Stamford, CT, changed its name to **XL Insurance America Inc.**

Winterhur International America Underwriters Insurance Co., changed its name to **XL Select Insurance Co.**



Personnel Actions

New Hires

Glenda Siegel, insurance licensing tech I

Resignations

Suzanne Staggs, clerk typist II

Derek Butler, financial examiner

James Clarke, financial examiner

Retirements

Brad Connor, division director

Dan Pawliczak, computer information technician III

Missouri Department of Insurance
P.O. Box 690
Jefferson City, MO 65102-0690
